IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1652 of 1983
To
FIRST APPEAL No. 1655 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MANIBEN WD/O AGARSINH DHULSINH - Appellant(s)
Versus
ASHOKKUMAR SHANKARLAL TRIVEDI & 8 - Defendant(s)

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Appearance :
MR MC BHATT for Appellant(s) : 1,
MR SB VAKIL for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 4 - 6.
GOVERNMENT PLEADER for Defendant(s) : 7 - 9.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/08/2006

ORAL JUDGMENT

1. By way of these appeals, the appellants have challenged the judgement and awards dated 30.10.82 passed by the Motor Accident Claims Tribunal in MACT Nos. 223, 224, 225 and 226 of 1980 whereby the Tribunal dismissed the said claim petitions.

2. The appellants in these appeals, being the wife and minor children of the deceased, had filed claim petitions in respect of the vehicular accident which occurred on

19.03.80 when the deceased who was working as a helper with the Gujarat Electricity Board was driving pillion on a motorcycle driven by opponent no.1 and owned by opponent no.2 towards Modasa. At a distance of about 100 feet from the Municipal Octroi Naka towards the Sarvodaya hospital, the bike dashed against a stationary roller lying on the side of the road. The deceased fell down and died on the spot. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellants has contended that the Tribunal ought to have come to the conclusion that the respondent no.1 was driving the motorcycle rashly and negligently when there was sufficient evidence to show the same.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the materials placed on record. The Tribunal has relied on the evidence of the witnesses, panchnama at Ex. 66 and the FIR report and has come to the conclusion that the heirs of the deceased have failed to prove with cogent and reliable evidence that it was the opponent no.1 who was driving the vehicle and that the possibility of the deceased driving the said vehicle cannot be ruled out.

Moreover, it is also evident from the records that the accident occurred when the motorcycle had left its correct path and gone on the wrong side and that too on the part on which the resurfacing was going on. As a result of perusal of records, I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and hence the appeals deserve to be dismissed.

5. In the premises aforesaid, appeals are dismissed. No orders as to costs.

(K.S. JHAVERI, J.)

Divya//